IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 501 of 2000

Date of decision: 28.9.2007

State of Himachal Pradesh **..Appellant**

Versus

Sita Ram and others **..Respondents**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellant: Mr. J.S.Guleria, Law Officer

For the Respondents: Mr. N.S.Chandel, Advocate

Deepak Gupta, J.

This appeal is directed against the order of the Chief Judicial Magistrate, Ghumarwin, district Bilaspur, in case No. 447/1 of 1996 whereby he has acquitted the respondents-accused of having committed an offence punishable under Sections 147/325/323 read with Section 149 IPC.

Briefly stated the prosecution case is that on 21.5.1996 at about 9.00 p.m. the accused persons formed

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

an unlawful assembly and in the prosecution of a common object used criminal force against the complainant, Rajinder Kumar and caused injuries to him. Rajinder Kumar lodged a complaint to the police vide rapat Ex. PW-8/A on the basis of which FIR Ex. PW-12/B was registered. Investigation was done by the police and after investigation challan was filed in court and the accused persons were summoned. The accused denied the charges leveled against them and claimed trial.

The main witness is complainant PW-1, Rajinder Kumar. According to him on 21.5.1996 he was in his house in village Hatwar. At about 9.00 p.m. when he was sleeping the accused persons called him from outside his house. His wife was cleaning utensils. He went out and the accused persons attacked him. Accused Amar Nath struck him with a stick on his head and Kaushalya Devi Devi and Sandhya Devij also inflicted injuries on him. According to him Amar Nath also inflicted a blow with a torch on his mouth as a result of which two of his teeth broke. His wife and father came immediately to the spot and accused persons pushed and beat his father. Other persons collected later.

Father of the complainant was not examined. His wife was examined as PW-5, who has supported the version of the complainant. According to her, main injuries were inflicted by accused Amar Nath, Jagdish and Sita Ram and Giano, Kaushalya Devi and Sandhya Devi also beat her husband. PW-1 Rajinder Kumar has not ascribed any role to Jagdish or Sita, whereas his wife implicates these persons also. Complainant has stated that his father was pushed by the accused whereas according to Sushma, her father-in-law came to the spot after the occurrence had taken place and accused had left. These are material contradictions in the statements of two witnesses. As far as the other witnesses PWs 2, 3 and 4 are concerned, they have not supported the prosecution case at all. They have all stated that they reached the spot after the accused had fled away and the witnesses had not seen the accused. The learned trial court on the basis of the entire evidence led before it, and especially in view of the material contradictions, held that it will be highly unsafe to conclude that accused had formed unlawful assembly and in the prosecution of common object of that assembly had used criminal force and violence against the complainant. After going through

the record I find that there are material improvements in the statements of the complainant as compared to the original version given by him in the FIR. There are contradictions in the statements of the complainant and his wife.

In the present case it would not be appropriate to interfere in the order of acquittal passed against the accused. When two versions are possible, benefit of doubt has to go to the accused.

In view of the above discussion, there is no merit in the appeal which is accordingly dismissed.

September 28, 2007(K) (Deepak Gupta), J.